



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT 21 2009

REPLY TO THE ATTENTION OF:
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

T.J. Weyls, Jr.
Webster Dubyak Co., L.P.A.
1220 West 6th Street
Cleveland, OH 44113

Re: A & B Metal Recycling, Cleveland, Ohio

Dear Mr. Weyls,

Enclosed is the Administrative Consent Order (ACO) which resolves the Finding of Violation issued to A & B Metal Recycling on June 26, 2008. Your client should retain this copy for his records.

The terms of this Order became effective on the date of signature by the Director, and are binding for two years from the effective date. Failure to comply with this Order may subject A & B to penalties of up to \$37,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

Should you have any questions, please contact Mr. Erik Olson, Associate Regional Counsel, at (312) 886-6829, or Ms. Natalie Topinka, of my staff, at (312) 886-3853.

Sincerely,

Sara Bruneman

For Brent Marable, Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosures: ACO

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	EPA-5-09-113(a)-OH-09
)	
A & B Metal Recycling)	Proceeding Under Sections
3049 East 55th Street)	113(a)(3) and 114(a)(1)
)	of the Clean Air Act
Cleveland, Ohio)	42 U.S.C. §§ 7413(a)(3) and 7414(a)(1)
)	
)	

Administrative Consent Order

1. The Director of the Air and Radiation Division (“Director”), U.S. Environmental Protection Agency, Region 5 (“EPA”), is entering into this Administrative Consent Order (“Order”) with A & B Metal Recycling Inc., (“A & B”), 3049 East 55th Street, Cleveland, Ohio under Sections 113(a)(3) and 114(a)(1) of the Clean Air Act (“Act”), 42 U.S.C. §§ 7413(a)(3), 7414(a)(1).

I. Statutory and Regulatory Background

2. Section 113(a)(3)(B) of the Act, 42 U.S.C. § 7413(a)(3)(B), authorizes the Administrator of EPA to issue an order requiring compliance with Title VI of the Act to any person who has violated or is violating any requirement of Title VI. The Administrator of EPA has delegated her order authority to the Regional Administrator of EPA, Region V pursuant to EPA Headquarters Delegation 7-6-A. The Regional Administrator of EPA, Region V, has delegated his order authority to the Director pursuant to EPA Region V Delegation 7-6-A.

3. The Administrator of EPA may require any person who owns or operates an emission source to make reports and provide information required by the

Administrator under Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1). The Administrator of EPA has delegated her information gathering authority to the Regional Administrator of EPA, Region V pursuant to EPA Headquarters Delegation 7-8. The Regional Administrator of EPA, Region V, has delegated his information gathering authority to the Director pursuant to EPA Region V Delegation 7-8.

4. Title VI of the Act, 42 U.S.C. § 7671, *et seq.* provides for the protection of stratospheric ozone. Section 608(b) of the Act, 42 U.S.C. § 7671g(b) provides EPA with the authority to regulate the safe disposal of class I and II substances. Class I and II substances include refrigerants containing chlorofluorocarbons (“CFCs”) and hydrochlorofluorocarbons (“HCFCs”). In the May 14, 1993, Federal Register, 58 Fed. Reg. 28660, EPA promulgated such regulations covering the safe disposal of CFCs and HCFCs from small appliances and motor vehicle air conditioners. These regulations for protection of the stratospheric ozone, recycling and emissions reduction are found in 40 C.F.R. Part 82, Subpart F.

5. Effective July 13, 1993, persons who take the final step in the disposal process (including but not limited to scrap recyclers) of small appliances and motor vehicle air conditioners (MVACs) must either recover the refrigerant in accordance with specific procedures or verify with signed statements that the refrigerant was properly evacuated and recovered prior to receipt of the small appliance or MVAC. See 40 C.F.R. § 82.156(f). If verification statements are used then the scrap recycler must notify the suppliers of the small appliance or MVAC of the need to properly evacuate and recover the refrigerant. See 40 C.F.R. § 82.156(f)(3). The scrap recycler must keep verification statements on-site for a minimum of three years. See 40 C.F.R. § 82.166(i) and (m).

6. EPA's regulations for the protection of the stratospheric ozone, recycling and emissions reduction define a "small appliance" as any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five pounds or less of a class I or class II substance used as a refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners and packaged terminal air heat pumps), dehumidifiers, under the counter ice makers, vending machines, and drinking water coolers. See 40 C.F.R. § 82.152.

7. EPA's regulations for the protection of stratospheric ozone, recycling and emissions reduction define motor vehicle air conditioners (MVACs) as mechanical vapor compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle. See 40 C.F.R. §§ 82.32 and 82.152.

II. Findings

8. A & B owns and operates a scrap metal recycling facility at 3049 East 55th Street, Cleveland, Ohio. A & B is a corporation organized and doing business in Ohio. A & B is a person as defined by 40 C.F.R. § 82.152.

9. A & B is a person who disposes of small appliances and is subject to the requirements of 40 C.F.R. Part 82, Subpart F.

10. On April 8, 2008, EPA conducted an inspection of A & B.

11. On May 12, 2008, EPA sent A & B a request for information pursuant to Section 114(a) of the Act, 42 U.S.C. § 7414(a). EPA requested information related to its compliance with the safe disposal requirements of 40 C.F.R. § 82.156.

12. On June 2, 2008, A & B responded to EPA's request for information.

13. A & B neither admits nor denies having accepted small appliances without recovering refrigerant. A & B neither admits nor denies failing to obtain verification statements that met the requirements of 40 C.F.R. 82.156(f) for any such small appliances.

14. On June 26, 2008, EPA sent A & B a Finding of Violation ("FOV"). EPA informed A & B in the FOV that it was not in compliance with 40 C.F.R. § 82.156(f) because it did not recover refrigerant and did not obtain proper verification statements. EPA offered A & B an opportunity to confer with EPA on the alleged violations, and on July 23, 2008 representatives of A & B and EPA discussed the FOV and alleged violations via teleconference.

15. On April 14, 2009, EPA conducted a second inspection of A & B.

16. On October 05, 2009, representatives of A & B and EPA discussed the proposed Order and agreed to the compliance program identified in Section III of this Order.

III. Compliance Program and Agreement

17. A & B must comply with 40 C.F.R. Part 82. Additionally, A & B must take the following actions by the dates specified and maintain compliance with paragraphs 18 through 23, below, for two years after the effective date of this Order for any small appliance or MVAC that it receives at its facility.

18. A & B will not accept small appliances or MVACs with cut or dismantled refrigerant lines unless its supplier can provide the certification identified in paragraph 19 below.

19. By October 31, 2009, A & B must notify its suppliers in writing that it will not accept small appliances or MVACs with cut or dismantled refrigerant lines unless the suppliers can certify that the refrigerant was properly evacuated prior to cutting or dismantling the refrigerant lines. For any appliances A&B would decide to accept in the future, A & B will have its suppliers use the verification statement included as Attachment 1 to this Order if they claim that refrigerant was previously evacuated.

20. Upon the entry and confirmation of this Administrative Consent Order, A & B shall notify its suppliers in writing that it will provide refrigerant recovery services at no additional cost or reduction in the value of the scrap. A & B may satisfy the notice requirements of paragraphs 19 and 20 with a sign that is prominently displayed at its weigh station during the period of time that this Order is effective.

21. By October 31, 2009, A & B must purchase and use equipment to recover refrigerant from small appliances and MVACs.

22. A & B must have the refrigerant recovered by a properly trained individual. If that individual is an employee of A & B, then A & B will ensure that the individual is properly trained to use the equipment identified in paragraph 21.

23. By October 31, 2009, A & B must use the small appliance log included as Attachment 2. A & B will retain copies of receipts for all refrigerant it collects and sends to another company for reclamation. A & B will also document the number of small appliances it rejects, the date the appliance was rejected, and the reason for rejecting the item(s).

24. By October 31, 2009, A & B must provide EPA with proof of its compliance with the notice requirements of paragraphs 19 and 20. By October 31, 2009,

A & B must also provide EPA with proof that it purchased the equipment required by paragraph 21 and has an individual trained in recovering refrigerant as required by paragraph 22.

25. By February 28, 2010, August 31, 2010, February 28, 2011, and August 31, 2011, A & B must submit to EPA a copy of its small appliance log, the information required by paragraph 23 and any verification statements used pursuant to paragraph 19 above.

26. A & B must send all reports required by this Order to:

Attention: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
EPA, Region 5
77 West Jackson
Chicago, Illinois 60604

IV. General Provisions

23. A & B agrees to the terms of this Order.

24. A & B will not contest the authority of EPA and it to enter into this agreement. A & B waives any further opportunity to confer or have a hearing.

25. This Order does not affect A & B's responsibility to comply with other federal, state, and local laws.

26. This Order does not restrict EPA's authority to enforce any violations of the Act.

27. Failure to comply with this Order may subject A & B to penalties of up to \$37,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

28. A & B may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If A & B fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Emission data provided under Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. “Emission data” is defined at 40 C.F.R. § 2.301.

29. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § ' 3501 *et seq.*, because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation. To aid in our electronic record keeping efforts, please provide your response to this Order without staples. Paper clips, binder clips, and 3-ring binders are acceptable.

30. The terms of this Order are binding on A & B, its assignees, and successors. A & B must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA that it has given the notice.

31. EPA may not use any information submitted under this Order in an administrative, civil, judicial, or criminal action.

32. This Order is effective on the date of signature by the Director. This Order will terminate two years from the effective date, provided that A & B has complied with all terms of the Order throughout its duration.

33. Each person signing this Order certifies that he or she has the authority to

32. This Order is effective on the date of signature by the Director. This Order will terminate two years from the effective date, provided that A & B has complied with all terms of the Order throughout its duration.

33. Each person signing this Order certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

34. Each party agrees to pay its own costs and attorneys' fees in this action.

35. This Order constitutes the entire agreement between the parties.


AGREED AS STATED ABOVE:

A & B METAL RECYCLING, INC.

By: Brian M Becker Date: 10-6-09
Name: Brian M Becker
Title: PRES.

AGREED AND SO ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

10/21/09
Date

Cheryl L. Newton
Director
Air and Radiation Division

Clean Air Act Verification Statement

Directions:

Complete statements 1 & 2.

Complete, sign, and date Seller Information section.

1. On today's date ____ / ____ / ____, I sold the following materials to A & B Metal Recycling (**please check all that apply**):

- () refrigerator(s)
() air conditioning unit(s)
() automobile(s) containing air conditioning units
() other _____

2. I certify that all refrigerants, as defined in section 608 of the Clean Air Act and 40 CFR 82, within these materials that had not leaked previously have been recovered from the materials prior to my delivery to A & B Metal Recycling in accordance with procedures described in 40 CFR §82.156 (g) or (h) :

on Date: _____

by: Name: _____

Address: _____

Telephone Number: _____

Buyer Information	Seller Information <i>(Please Print)</i>
A & B Metal Recycling 3049 E. 55th St. Cleveland, OH 44127 (216) 640-2920	Date: _____ NAME: _____ CORPORATION: _____ STREET ADDRESS: _____ CITY/STATE/ZIP: _____ TELEPHONE NUMBER: _____ SIGNATURE: _____
Accepted by: A & B Metal Recycling	

Refrigerant Recovery Log

[illegible]

CERTIFICATE OF MAILING

I, Betty Williams, certify that I sent the Administrative Consent Order, EPA Order No. EPA-5-09-113(a)-OH-09, by Certified Mail, Return Receipt Requested, to:


T. J. Weyls, Jr.
Webster Dubyak Co., L.P.A..
1220 West 6th Street
Cleveland, Ohio 44113

I also certify that I sent a copy of the Administrative Consent Order, EPA Order No. EPA-5-09-113(a)-OH-09, by First Class Mail to:

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, OH 43216-1049

Dennis Bush, Supervisor
Northeast District Office
Ohio Environmental Protection Agency
2110 East Aurora Road
Twinsburg, Ohio 44087

on the 23rd day of October 2009.


Betty Williams
Administrative Program Assistant
AECAS IL/IN

CERTIFIED MAIL RECEIPT NUMBER: 7001032000058915 9245